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Review of implementation of the United Nations Convention against Corruption

Executive summary

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II. Executive summary

Luxembourg

1. Introduction: Overview of the legal and institutional framework of Luxembourg in the context of implementation of the United Nations Convention against Corruption

Luxembourg signed the United Nations Convention against Corruption during the High-level Political Conference in Mérida (Mexico) on 10 December 2003. The Convention was ratified by an Act adopted by the national Parliament on 10 July 2007 and signed by the Grand Duke on 1 August 2007. Luxembourg deposited its instrument of ratification with the Secretary-General of the United Nations on 6 November 2007.

Luxembourg is a State member of the European Union, the OECD, the Council of Europe's Group of States against Corruption (GRECO), MONEYVAL and FATF.

According to a long established jurisprudence of Luxembourg's Supreme Courts (*Cour de cassation, Cour constitutionnelle* and *Cour administrative*, generally accepted rules of international law and international conventions, once they have been ratified by an act of Parliament and have come into effect, shall form an integral part of Luxembourg's domestic law and shall override any other contrary provision of domestic law. Accordingly, the Convention has become an integral part of Luxembourg's domestic law.

The most relevant implementation legislation is found in the Criminal Code (Code Pénal, "CP"), the Criminal Procedure Code (Code d'Instruction Criminelle, "CIC") and in special laws.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

The provisions on active and passive bribery are contained in articles 246, 247, 249 and 250 CP.

The law does not contain a definition of "public official". Nevertheless, the law and an explanatory note refer to a "depositary or law enforcement agent, or a person in charge of a public service mission or vested with a public election mandate" (arts. 246, 247, 249 CP). With regard to agents of public companies and foreign officials, the same concepts and definitions apply as for national officials.

Unilateral corruption through the simple offering or giving of a bribe has been introduced into the CP by the Law of 15 January 2001. There is no longer a requirement of a "corruption pact". Concerning the concept of "undue advantage", the law in force does not allow any exemptions for facilitation payments. The legal texts do not distinguish whether the official acts in violation of his duties or not.

Trading in influence is criminalized in articles 246 to 249 CP. However, it is only criminalized to the extent that one intends to "obtain from an authority or a public administration any distinction, employment, public tender or any other favourable

decision". On the other hand, the offence is completed even if it does not achieve the desired result.

Article 21 of the Convention is implemented through article 310-1 CP. Luxembourg law goes beyond the requirements of the Convention in that it applies equally outside the context of business activities. However, the national legislator has retained the formula "without the knowledge and authorization".

Money-laundering, concealment (arts. 23 and 24)

Luxembourg has criminalized money-laundering through the provisions in articles 506-1 to 506-8 CP. While Luxembourg has opted for a list of predicate offences, the last indent of article 506-1(1) CP means that, due to the low minimum penalty of 6 months imprisonment, in practice Luxembourg almost has an all-crimes approach to money-laundering. In particular, all corruption offences are specifically covered by a separate indent.

Attempt, preparation and conspiracy to commit money-laundering, as well as complicity are covered by articles 506-1(4), 506-4, 506-5 and 506-6 CP, as well as through the general provisions in articles 66 and 67 CP (authors and accomplices of crimes). Article 506-4 CP explicitly provides for the criminalization of self-laundering.

Concealment is covered by the provisions in articles 505 and 506 CP.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The domestic provisions which correspond to article 17 of the Convention are article 240 CP (embezzlement) and article 491 (breach of trust). Article 171-1 of the Corporations Act criminalizes the embezzlement of property in the private sector in a broad manner, also penalizing the exercise of powers contrary to the interests of the company. On the other hand, only managers, de jure or de facto, may be perpetrators of the offence.

Luxembourg has implemented article 19 of the Convention through articles 240, 243, 244 and 245 CP.

Luxembourg's National Anti-Corruption Committee (COPRECO) discussed the possibility of criminalizing illicit enrichment (Art. 20 of the Convention) but decided not to recommend this legal change to the government because this would in practice put the burden of proof on the suspect, which was considered to be incompatible with the fundamental legal principle of the presumption of innocence.

Obstruction of justice (art. 25)

The national authorities reported the adoption and implementation of article 25 (a) of the Convention through 140, 141, 223, 224, 251 to 253 and 282 CP.

Article 25(b) of the Convention is implemented through articles 140, 141, 251 to 253 and 275 et seq. CP.

Liability of legal persons (art. 26)

Luxembourg cited articles 34 to 40 CP. Article 26, paragraphs 1 and 2, of the Convention is implemented through article 34 CP. The persons who can incur the

liability of the legal person are the members of its boards or its de jure or de facto managers (art. 34 CP).

The reviewing experts noted the large scope *rationae materiae* and *personae* of the liability of legal persons which covers all crimes and offences and includes all legal persons, including those governed by public law (except for the State and the communes) and public enterprises. Moreover, corporate criminal liability is supplemented by administrative sanctions (art. 203 *Loi modifiée du 10 août 1915 sur les sociétés commerciales*).

According to article 34(2) CP, the liability of legal persons is independent from the liability of the individual who commits the offence. Conversely, the Luxembourg courts have held that criminal liability of legal persons may be examined even when the organ or the representative may not have been effectively prosecuted and convicted of the offence.

Bearing in mind that the legislation on the criminal liability of legal persons was only enacted in 2010, the reviewing experts noted the absence of criminal sanctions for corruption-related offences imposed on legal persons to date.

Participation and attempt (art. 27)

Luxembourg has adopted and implemented article 27(1) of the Convention through the provisions in articles 66 to 69 CP. Attempt is governed by articles 51 and 52 CP. Luxembourg pointed out that as far as corruption offences are concerned, there was little practical application for the general rules on attempt. Simple preparatory acts are not criminalized under Luxembourg's law.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The law distinguishes between different categories of offences (*crime*, *délit*, *contravention*) and the gravity of the offence can be taken into account due to the range of sentences for each offence. The level of sanctions for corruption offences is adequate.

The only public officials who enjoy a very limited immunity are the members of Parliament and the Grand Duke. Only the arrest of an MP during a parliamentary session requires prior approval by Parliament (Art. 68, 69 of the Constitution). However, Article 116 of the Constitution vests Parliament with the discretionary power to pursue itself criminal proceedings against a member of the Government.

Luxembourg has a discretionary prosecution system and is not governed by the principle of mandatory prosecution. However, prosecution is the rule, particularly for offences punishable with prison sentences, like corruption offences.

A defendant who does not show up voluntarily at court proceedings can be arrested (art. 119 CIC). The regulation about parole can be found in articles 116, 119 and 94 CIC, as well as articles 619 et seq. CIC and article 100 CP.

Article 30(6) of the Convention is implemented through articles 48 and 49 of the Civil Servants Act.

Luxembourg has established procedures for the disqualification of persons convicted of corruption offences from holding public office in articles 7, 10, 11, 14 CP and articles 48 and 49 of the Civil Servants Act.

Luxembourg can apply disciplinary and criminal sanctions simultaneously.

The legislation promotes the reintegration into society of persons convicted of offences. The reintegration into society of offenders is governed by articles 644 to 658 et seq. CIC and the Law on Penitentiary Administration. Moreover, there is the Law on the execution of penalties.

While in terrorism, organized crime and drug trafficking cases there is a possibility for granting crown witnesses immunity, this possibility does not exist in corruption cases. However, in such cases, the cooperation of the offender can be taken into account to mitigate the punishment.

Protection of witnesses and reporting persons (arts. 32 and 33)

The non-disclosure of the identity of a witness is possible in the very special case of covert investigation.

Luxembourg further cooperates with other States in the field of witness protection. Given the small size of the country, there are no formal witness protection programmes in Luxembourg.

The protection of reporting persons has been implemented through the Act of 13 February 2011 on whistle-blower protection. The Labour Act lays down a reversal of the burden of proof for cases of retaliatory dismissal in article L.271-2. Civil servants are not only protected from reprisals but are actually obliged to report instances of corruption. Transparency International (TI) Luxembourg has established a hotline for whistle-blowers which is financed by the State.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

The domestic legal framework on freezing, seizing and confiscation can be found in articles 7, 14, 19, 21, 31, 32, 32-1 CP. These chapters cover not only proceeds of crime, but also instrumentalities used, or intended to be used, in the commission of a crime.

Luxembourg has not established an asset management agency to specifically dispose of frozen, seized or confiscated property. The administration of frozen or seized property is handled by the State. In cases related to drug trafficking, money-laundering or financing of terrorism, the property is transferred by the State to the Asset Forfeiture Fund (*Fonds de lutte contre certaines formes de criminalité*).

Proceeds of crime that have been transformed or converted, in part or in full, into other property, is liable to freezing and confiscation.

Confiscation can also comprise banking documentation if it was considered an instrument of the offence. Otherwise, if it was considered evidence, it would form part of the case file and would be destroyed or given back to its legitimate owner at the closing of the case (arts. 31-35, 65, 66, 66-1 to 66-5, 67, 67-1 CIC). Luxembourg does not have a central register of bank accounts. Following the introduction of articles 66-4 and 66-5 CIC, the investigating judge may order a credit institution to provide information or documents concerning bank accounts or

banking transactions through a simplified procedure. According to this procedure, the order may be served to the credit institution concerned by way of a notification made electronically. The credit institution notified by the order shall communicate the information or documents requested electronically to the investigating judge within the time period indicated in the order. Non-compliance with such an order is punishable by a fine of 1,250 to 125,000 euros (article 66-5 (3) CIC). Moreover, banks cooperate with the FIU and are criminally liable for Know-Your-Customer statements.

In accordance with article 31 (8) of the Convention, Luxembourg has considered the possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation but decided not to do so because such a requirement was considered to be inconsistent with the fundamental legal principle of the presumption of innocence. However, the principle of the free assessment of the evidence equally applies to the lawful or illegal origin of alleged proceeds of crime.

The rights of bona fide third parties are protected under articles 31(4), 32-1(4) CP.

Statute of limitations; criminal record (arts. 29 and 41)

The rules about the statute of limitations are regulated in articles 91 to 99 CP and articles 635 to 643 CIC. The prescription period for the prosecution of crimes is 10 years, and 5 years in the case of misdemeanours (art. 637 and 638 CIC). Prescription of corruption cases generally commences the moment in which the acts are committed. Prescription is interrupted each time evidence is taken or proceedings are brought. The issuing of an arrest warrant would restart the clock.

In the determination of the punishment the court has the possibility to take into consideration any previous, including foreign, conviction (art. 7-5 CIC).

Jurisdiction (art. 42)

The rules about jurisdiction in criminal cases are regulated in the CIC. Luxembourg has implemented the territoriality principle and both the active and passive personality principle for establishing jurisdiction. Luxembourg courts have jurisdiction over crimes committed by its nationals outside its territory without a requirement for dual criminality (art. 5(1) CIC). For misdemeanours, dual criminality is required.

The simple fact of keeping money stemming from certain predicate offences in an account in Luxembourg would constitute money-laundering and thus establish Luxembourg's jurisdiction over the case.

Luxembourg can establish its jurisdiction over the offences established in accordance with the Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals (art. 5-1 CIC).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Under Luxembourg law, corruption does not make a contract void *ipso iure*, only voidable. In private law proceedings, a contract can be rescinded or a concession revoked for reasons of fraud. Moreover, public procurement law contains specific

administrative sanctions for corruption offences. A criminal record for natural and legal persons exists.

Compensation for damage is available and can be claimed under articles 56 to 62 CIC by the civil party in criminal proceedings.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Luxembourg does not have a specialized anti-corruption body. Rather, the fight against corruption is the task of the criminal police and the prosecution service. Within the Luxembourg police as well as within the Prosecutor's office, a certain number of people are specialized in combating corruption (i.e. by special training) and are responsible for corruption cases. Prosecutors and Judges have the same status under Luxembourg law, ensuring their independence. The police are administratively independent. The *police judiciaire* act under the supervision of the prosecutor general, but under the sole orders of the investigating magistrate if acting in a specific file.

Luxembourg has a judicial type FIU which is not limited in its investigations by the facts contained in a suspicious transaction report. The FIU is staffed by prosecutors who have powers similar to those of an investigating judge.

Luxembourg has established a horizontal committee for the prevention of corruption (the "COPRECO"). COPRECO can invite representatives from the private sector and civil society.

The 2008 Act on Cooperation contains an obligation for spontaneous information sharing between national authorities. Moreover, civil servants are obliged to report corruption offences (art. 23 CIC). The public authorities are regularly organizing workshops and conferences on the subject of corruption with the private sector. Luxembourg is granting financial support to TI to run an anti-corruption hotline where persons can report suspicious acts linked to corruption.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- (Art. 21) Luxembourg law goes beyond the requirements of the Convention in that it applies equally outside the context of business activities;
- (Art. 22) The broad scope of application of the provision criminalizing embezzlement in the private sector;
- (Art. 30) The granting of immunities to members of parliament only, thus strictly limiting the number of officials enjoying this privilege;
- (Art. 33) The specific protection against reprisals in the Labour Act introduced by the Whistleblower Protection Act;
- (Art. 36) The far-reaching powers of its FIU and the independent status of the prosecutors which is akin to that of judges;
- (Art. 42) The absence of the requirement of double criminality for the establishment of criminal jurisdiction over extraterritorial offences other than misdemeanours committed by nationals of Luxembourg.

2.3. Challenges in implementation

While noting Luxembourg's advanced anti-corruption legal system, the reviewers identified some challenges in implementation and/or grounds for further improvement and made the following remarks to be taken into account for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant Convention requirements). Moreover, they noted, as a general observation, that more statistics, examples and case law in many areas could have better demonstrated the implementation of the Convention in practice.

- (Art. 18) Bearing in mind the optional nature of the provision, the reviewing experts recommend that Luxembourg consider monitoring the jurisprudence pertaining to trading in influence in order to establish if the law is comprehensive enough to cover any "undue advantage";
- (Art. 20) Bearing in mind the decision not to criminalize illicit enrichment, the reviewing experts recommend strengthening existing asset declaration systems and introducing such systems for high-ranking officials;
- (Art. 26) The reviewing experts recommend that Luxembourg consider amending the existing legislation so that the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons. Moreover, Luxembourg is requested to monitor the jurisprudence on the criminal liability of legal persons;
- (Art. 30) The reviewing experts voiced concern about the rule in article 116 of the Constitution, vesting Parliament with the discretionary power to pursue itself criminal proceedings against a member of Government. They recommend the adoption of a comprehensive system of prosecution of members of Government as foreseen in draft bill n°6030 on the revision of the Constitution;
- (Art. 32) Given the small size of the country the reviewing experts recommend applying the ad hoc protection arrangements for witnesses with neighbouring countries to cases of corruption.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

The basic provisions on extradition are found in the Extradition Law of 20 June 2001. This law applies in the absence of bilateral or multilateral agreements and without prejudice to the applicability of the Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW) and the surrender procedures between States members of the European Union. The Law of 17 March 2004 on the EAW and the surrender procedures between States members of the European Union, as modified by Law of 3 August 2011, implements the above-mentioned Framework Decision.

The threshold for the identification of extraditable offences is at least one year of imprisonment in the event of a request for extradition for prosecution purposes or a

remainder of sentence of at least six months where extradition is requested for purposes of enforcement of such sentence. The requirement of dual criminality is applied, but with a focus on the underlying conduct. Therefore, a flexible approach is taken on the interpretation of this requirement. In addition, the law of 17 March 2004 stipulates that the EAW could be executed without dual criminality in cases of corruption and laundering of proceeds of crime, provided that the related offences are punishable in the issuing State by a penalty or a measure of deprivation of liberty of a maximum of at least 3 years.

Luxembourg may extradite even in the absence of an international treaty or convention, applying the domestic law. The Convention has direct force of law by virtue of the primacy of international treaties. Therefore, most of its extradition-related provisions are directly applicable without the need for implementing legislation. Almost all offences under the Convention have been covered by domestic legislation. Additionally, reciprocity could be used as a legal basis.

The formalities and information necessary in order to process a request for extradition are set forth in article 10 of the EAW Law and article 23 of the Extradition Law which provide simplified extradition proceedings.

In the framework of the EAW, the person sought may consent to his/her surrender without further formality. He/she may also waive the rule of specialty. Under the national law of extradition, the lifting of the specialty rule is possible on the advice of the Council Chamber of the Court of Appeal and subject to the consent of the person sought.

The Extradition Law provides for the provisional arrest of the person sought to ensure his/her presence in extradition proceedings.

The Extradition Law sets out the principle of *aut dedere, aut judicare*. It establishes nationality as one of the grounds for refusal of an extradition request. Extradition may also be refused if the person sought is a foreigner who resides permanently in the Luxembourg and if extradition is considered inappropriate due to his integration or to the community ties that he has built in Luxembourg, provided however that he may be prosecuted in Luxembourg for the facts for which the extradition is requested. Where a request for extradition is refused on the ground of nationality, the authorities forward the case to prosecution authorities without delay, the prosecution in lieu of extradition is also possible through the direct application of treaties. The Act of 27 October 2010 has completed the Act of 20 June 2001 by inserting article 14-1, in application of the principle "aut dedere aut judicare".

Safeguards of due process guarantee all human rights of the person sought from the moment of his/her arrest and throughout the extradition process. Article 6 of the European Convention of Human Rights is applied by the courts in domestic extradition proceedings.

Luxembourg does not refuse extradition for tax offences if the latter are related to other extraditable offences (accessory extradition). Although article 1(6) of the Extradition Act simply states that "[e]xtradition shall not be granted for offences on issues of taxes and levies, customs and foreign exchange", extradition is only denied if the relevant request is based exclusively on tax offences. The national authorities

confirmed that fiscal offences do not pose difficulties in corruption-related investigations.

Under article 1 of the Law on the Transfer of Sentenced Persons, if the Luxembourg national who has been the subject of a final conviction by a foreign jurisdiction and who evades the enforcement of that condemnation seeks refuge in Luxembourg, Luxembourg can take responsibility for the execution of this condemnation at the request of the State which has pronounced the final sentence. Luxembourg has not entered yet into a bilateral agreement on this matter. The transfer of sentenced persons is possible on the basis of the Convention on the Transfer of Sentenced Persons of 1983 and its Additional Protocol of 1997. The Act of 25 April 2003 is applied in the absence of applicable multilateral or bilateral conventions.

Luxembourg has no specific law concerning the transfer of criminal proceedings. In practice, the transfer is possible and is decided upon by the competent judicial authorities of Luxembourg and the other country concerned.

Mutual legal assistance (art. 46)

The legal framework for mutual legal assistance (MLA) is set out in Law of 8 August 2000. In addition, Luxembourg has entered into a number of bilateral and multilateral agreements on MLA. The Convention could be used as legal basis. MLA can also be afforded on the basis of reciprocity.

The General Prosecutor's Office has been designated as the central authority for MLA. Luxembourg does not require a formal decision of the requesting State, but the request must come from a competent judicial authority. The request must also relate to an investigation, prosecution or judicial proceedings in the requesting State.

MLA can be requested and obtained for all the purposes set forth in article 46, paragraph 3, of the Convention. It may also be provided in relation to alleged offences involving legal persons, according to Law of 3 March 2010. The Convention can be used as the basis for spontaneous transmission of information outside the European Union framework.

Although bank secrecy is not mentioned in the domestic legislation, the national authorities confirmed that bank secrecy does not pose difficulties in corruption-related investigations.

MLA may be refused if it is likely to endanger the national sovereignty or jeopardize security or pose a threat to public order or harm other essential national interests; and if the assistance is requested for political offences.

In addition, article 3 of the Law of 8 August 2000, as amended by article 10 of the Law of 27 October 2010 relating to the Fight against Money Laundering and Terrorist Financing, indicates that "[s]ubject to the provisions of conventions, a request for MLA is refused if it exclusively involves offences related to taxes, customs duties or currency exchange under Luxembourg law".

Dual criminality is not required to grant MLA requests, unless coercive measures are involved, in which case judicial authorization is mandatory. Requests for assistance that do not involve coercion will be executed even in the absence of dual criminality, as long as the grounds for refusal set out in the MLA law do not apply.

The transfer of detainees for the purpose of assisting in investigations can be authorized through the Convention, on the basis of existing MLA treaties or on a reciprocity basis.

The provisions of articles 46(10) to (12) are directly applicable.

Requests sent via fax and e-mail are generally accepted. Oral requests are refused but oral consultations are welcomed.

In principle the requests would be executed on the basis of national legislation to the extent that such execution does not contravene the national law.

Videoconference hearings are commonly carried out by Luxembourg at the request of foreign judicial authorities. This form of assistance is carried out for the hearing of witnesses and experts but not of defendants.

In application of article 13 of the MLA Act, information obtained through MLA may not be used in criminal or administrative proceedings other than that for which the assistance was granted (rule of specialty). Luxembourg ensures confidentiality of the facts and substance of the request if the requesting State so required.

Luxembourg does not refuse MLA if the relevant request also includes tax offences which are accessory to corruption offences. The refusal of an MLA request is always preceded by consultations.

A detailed timeline for the execution of MLA requests is not set out in domestic legislation. However, MLA cases are treated as a priority pursuant to MLA legislation.

Regarding the safe conduct of witnesses, article 11 of the European Convention on Mutual Assistance in Criminal Matters of 1959 is in force in relation to Luxembourg.

The costs of MLA requests are borne by Luxembourg. Judicial fees are borne by Luxembourg even if they are very high.

Documents accessible to the public are provided in the framework of MLA requests requiring no measure of coercion, thus outside of the condition of dual incrimination. All documents not accessible to the public but deemed relevant as a means of evidence in the context of a criminal investigation may be seized by the competent examining judge in accordance with the specific provisions of the CIC and other applicable legal provisions.

Luxembourg is bound by regional instruments on MLA.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Law enforcement authorities engage in broad, consistent and effective cooperation with international counterparts to combat transnational crime, including corruption offences. The Central authority to deal with the cooperation is the Prosecutor's General's Office.

Luxembourg uses several networks such as Europol, INTERPOL, Schengen Information Service, Bureau de Cooperation Policière, COPRECOR and Eurojust, to facilitate the exchange of police information.

For information exchange, Luxembourg uses EGMONT, CARIN, Siena, Europol, and FIU Net.

The measures to provide necessary items of quantities of substances for investigative purposes are successfully implemented, is done through police and judicial channels.

Luxembourg does not have liaison officers on other jurisdictions but on occasion has used liaison officers of neighbouring countries in investigations.

Joint investigation teams (JITs) can be established with other European Union member States. In case other countries requested to carry out such joint investigations, the Convention would be used as legal basis.

With regard to special investigative techniques, systematic surveillance, telephone tapping, the monitoring of banking relations and undercover operations can be carried out. In the context of MLA, the special investigative techniques mentioned can all be carried out at the request of the foreign judicial authorities on the basis of the Convention.

Regarding the use of controlled delivery at the international level, the Convention would be directly applicable.

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing chapter IV of the Convention:

- The establishment of a comprehensive legal framework on international cooperation in criminal matters which encompasses all forms of international cooperation;
- (Arts. 44(1), 46(9) and 43(2)) The flexible interpretation of the double criminality requirement based on the underlying conduct of the offence;
- (Art. 50) The protection of undercover investigators is explicitly provided for by law.

3.3. Challenges in implementation

The following points are brought to the attention of the Luxembourg authorities for their action or consideration (depending on the mandatory or optional nature of the relevant Convention requirements) with a view to enhancing international cooperation to combat offences covered by the Convention:

- (Art. 44(2)) Notwithstanding the flexible interpretation of the double criminality requirement in domestic extradition proceedings, the reviewing experts encouraged the national authorities to explore the possibility of relaxing the strict application of the requirement in cases of Convention-based offences not established in domestic legislation, in line with article 44(2) of the Convention;
- (Arts. 45, 48) Luxembourg is encouraged to consider the expansion of its network of bilateral treaties on transfer of sentenced persons because of the high number of foreign prisoners in its penitentiary institutions;

- (Arts. 46(13), (14)) Notify the Secretary-General of the United Nations about the central authority for processing MLA requests, as well as the acceptable languages;
- (Art. 47) Consider whether it could be appropriate to establish guidelines for the public prosecutor to identify cases, where a transfer of the proceeding is appropriate, and expand the network of treaties with non-European countries;
- (Art. 49) Consider setting up joint investigation teams in cross-border investigations.

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II. Executive summary

Ghana

1. Introduction: Overview of the legal and institutional framework of Ghana in the context of implementation of the United Nations Convention against Corruption

Ghana signed the Convention on 9 December 2004, ratified it on 16 December 2005 and deposited its instrument of ratification on 24 June 2007. Ghana has a dualist system and does not apply the Convention directly. The legal system in Ghana is based on the common law. In 2012, Ghana developed a National Anti-Corruption Action Plan, which was pending adoption by the Parliament of Ghana at the time of the review.

The institutions most relevant in the fight against corruption are the CHRAJ (Commission on Human Rights and Administrative Justice), EOCO (Economic and Organised Crime Office), the Ghana Police Service, the Attorney-General's Office, the FIC (Financial Intelligence Center), the Auditor-General's Office, the Internal Audit Agency, the Public Procurement Authority, Controller and Accountant-General's Department, Bureau of National Investigations and the Public Accounts' Committee of Parliament. Within the Judicial Service, Ghana has established Financial and Economic Crime Courts.

The CHRAJ and the EOCO are the most important corruption investigation authorities. With regard to prosecution, the EOCO has since its creation in 2010 invested considerably in specialized investigation training. CHRAJ does not have the power to prosecute.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active bribery of national public officials is regulated in sections 239, 241-243 and 245 of the Criminal Offences Act, 1960 (Act 29). Section 3 defines the term "public officer", while Section 261 defines "valuable consideration", corresponding to "undue advantage".

Sections 151, 239, 242-244, 247, 253-254 of the Criminal Offences Act criminalize passive bribery of public officials.

While there is no specific offence of transnational bribery, the norms quoted above could also be applied in this context based on the broad definition of public officers in Section 3. However, such conduct can only be prosecuted if committed in Ghana because no jurisdiction was established for corruption offences committed abroad.

Both active and passive trading in influence are criminalized in Section 252 of the Criminal Offences Act. With regard to active trading in influence, Section 252, paragraph 2, does not cover the provision of an undue benefit to "any other person", nor the "promise" and the granting "directly or indirectly" of such undue benefit. As to passive trading in influence, Section 252, paragraph 1, does not cover the elements of "solicitation", "directly or indirectly" and "for himself or herself or for another person".

Some aspects of the offence of active bribery in the private sector are covered in sections 92 and 93 of the Public Procurement Act; however, they are limited to the procurement process and the conducts covered in these provisions will often entail bribery of a public official. Ghana has not criminalized passive bribery in the private sector.

Money-laundering, concealment (arts. 23 and 24)

Ghana establishes the laundering of proceeds of crime as an offence in sections 1-3 of the Anti-Money Laundering Act 2008 (Act 749), and section 12 of the Narcotic Drug Act. The Anti-Money Laundering Act covers the disguise of the origin and location, but not of the true nature, disposition, movement or ownership of property.[1] A wide range of predicate offences including most corruption offences is covered, whether they occur in Ghana or elsewhere. Self-laundering is not excluded. Ghana has not provided a copy of its laws to the Secretary-General of the United Nations. It is noted that only two money-laundering cases had been prosecuted.

Concealment is criminalized by section 1 (a) (b), 3 of the Anti-Money Laundering Act, which does not contain the element of "continued retention", although it could be covered under the element "takes possession".

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The Criminal Offences Act addresses embezzlement and misappropriation in its Sections 124-125, 128-129, 179 A, C, D and 260, as well as Sections 1 to 4, and especially Section 3, of the Public Property Protection Act from 1977 (SMDC 140). These offences apply to all persons, not only to public officials. Section 3 of the Public Property Protection Act refers to assets "entrusted to care" to the offender, but not by virtue of an official position. Embezzlement for the benefit of a third person is not specifically regulated.

Abuse of functions is criminalized in sections 179 C and D of the Criminal Offences Act. Ghanaian authorities confirmed that the element "for private profit and benefit" in section 179 C can also cover the benefit of third parties.

Ghana has not criminalized illicit enrichment.

The embezzlement or misappropriation of property in the private sector is punishable under Sections 124-125, 128-129 and 140 of the Criminal Offences Act, as well as Sections 1 to 4, and especially Section 3, of the Public Property Protection Act from 1977 (SMDC 140). Section 3 of the Public Property Protection Act refers to assets "entrusted to care" of the offender. However, they do not specifically address embezzlement or misappropriation by those directing or working in a private sector entity, and they only refer to public property. Further, embezzlement for the benefit of a third person is not specifically regulated.

[1] In 2014, Ghana adopted the Anti-Money Laundering (Amendment) Act, 2014 (Act 874). It criminalizes the disguise of the source, disposition, movement or ownership; only the disguise of the true nature of the property is not covered.

Obstruction of justice (art. 25)

Sections 234-235 and 251, together with Section 20, of the Criminal Offence Act contain relevant offences for the promise, offering and giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence.

The use of physical force, threats or intimidation to obstruct justice are regulated in Section 222 for the interference with the giving of testimony, not for false testimony or the production of other evidence. Section 74 generally criminalizes threat of harm.

Sections 234-235 of the Criminal Offences Act, section 25 of the Anti-Terrorism Act, and Section 21 of the EOCO Act provide for obstruction of justice; the Criminal Offence Act only provides for the use of violence, not threats and intimidation. Section 21 of the EOCO Act does not specifically cover physical force, threat and intimidation, and the sanction is considerably lower.

Liability of legal persons (art. 26)

Ghana has established the criminal liability of legal persons without prejudice to the criminal liability of the natural persons who have committed the offences; no specific provisions spell out the applicable sanctions. It was noted that accusations against legal persons were not frequent.

Section 3 (q) and (r) of the Public Procurement Act allow for the debarring of companies which have offered inducements.

Participation and attempt (art. 27)

Participation and attempt are regulated in sections 18, 20 and 29 of the Criminal Offences Act and section 56 of the Narcotics Drugs Act; the preparation of an offence in section 19 of the Criminal Offences Act and section 56 of the Narcotics Drugs Act.

Prosecution, adjudication and sanction; cooperation with law enforcement authorities (arts. 30 and 37)

Ghana has a broad range of sanctions for corruption offences. Fines can be imposed in addition to imprisonment.

Ghana does not have jurisdictional privileges. Immunity rights are accorded to the President, Members of Parliament, high representatives of the judiciary, diplomats, EOCO and the CHRAJ. Immunities can be lifted by the courts.

Prosecution is not obligatory; some guidelines are contained in the Ghana Code for Prosecutors as to how to apply their discretionary powers.

Ghana can impose preventive detention or alternative measures, such as bail. Through the "Justice for All" programme, delays in criminal trials have been reduced. There are regulations on both license and parole; the provision on parole it is not applied in practice.

According to regulation 11 of the Civil Service Disciplinary Code Regulations, a public official can be suspended from office pending criminal proceedings. As a

matter of practice, reassignment is also possible. The removal pending criminal proceedings is considered unconstitutional.

Persons can be disqualified from public office and from office in a company wholly owned by the State according to section 9 of the Public Office Holders Act.

Regulation 9 of the Civil Service Disciplinary Code Regulations stipulates that disciplinary proceedings shall not be taken until the conclusion of the criminal proceedings on the same grounds.

Ghana does not have a programme for the reintegration into society of persons convicted of offences.

Collaborators with justice can be awarded a mitigated sanction if they compensate the damage caused, or be given the status of a witness in the procedure and therefore be exempt from prosecution if they supply useful information. Such persons do not currently enjoy witness protection. Ghana does not have agreements or arrangements in place that would permit the mitigation of punishment or the granting of immunity in international cases.

Protection of witnesses and reporting persons (arts. 32 and 33)

Ghana does not have a witness protection programme. A Witness Protection Bill (2013) is pending. Ghana has not concluded agreements and arrangements with other States for the relocation of witnesses, experts and victims.

Ghana does not have measures through which the views and concerns of victims could be presented and considered in criminal proceedings.

The protection of reporting persons is foreseen by section 107 of the Evidence Act, section 32 of the Anti-Money Laundering Act, and the Whistleblower Act. A Whistleblower (Amendment) Bill 2013 is pending.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Section 51 of the EOCO Act regulates non-conviction based confiscation of proceeds and instruments of corruption, but not of instruments "destined for use".

The EOCO and FIC have broad powers for freezing and seizure (sec. 23, 24 EOCO Act, sec. 74 EOCO Act, sec. 47 AML Act); currency destined for use in offences can be seized, but not other instrumentalities destined for use.

There is no programme or institution responsible for the management of seized and confiscated property apart from terrorism cases.

There is no legislation on the seizure and forfeiture of proceeds of crime transformed or converted into other property; for the confiscation up to the assessed value of proceeds intermingled with property acquired from legitimate sources; and for the seizure and confiscation of income or other benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled.

Section 33 of the EOCO Act on freezing of property is applicable to the seizure of bank records.

Sections 41 and 45 of the EOCO Act establish the inversion of the burden of proof. This administrative confiscation is very frequently applied, especially due to the low number of prosecutions in corruption and money-laundering cases.

Sections 31 and 54 of the EOCO ACT foresee that seizure and confiscation shall be without prejudice to the rights of bona fide third parties.

The FIC can request financial institutions for banking information, while all other investigation bodies need a court order for the lifting of banking secrecy.

Statute of limitations; criminal record (arts. 29 and 41)

There is no statute of limitations.

Section 71 of the Mutual Legal Assistance Act is used to introduce foreign criminal convictions into criminal proceedings.

Jurisdiction (art. 42)

Ghana has established its jurisdiction with regard to most circumstances referred to in article 42 of the Convention, with the exception of corruption offences committed against one of its nationals; acts of participation in and attempts of money-laundering carried out outside Ghana; offences committed against the State; and offences when the alleged offender is present in its territory and Ghana does not extradite him.

Ghana has partially established its jurisdiction over offences committed by a national. Ghana consults with the central authority of a foreign State to determine the appropriate venue for the proceedings to take place when criminal proceedings are likely to be initiated or are pending in both States.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Ghana does not have legislation or relevant practice for rescinding or annulling contracts or withdrawing concessions, although this seems to be done in practice. Groups of Ghanaian citizens have started public interest litigation in cases in which major international firms in Ghana were supposedly involved in corrupt practices.

Except for provisions specific to whistle-blowers, no legislation foresees the compensation for damages suffered as a result of corruption.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The CHRAJ, the EOCO, the Criminal Investigation Department of the Ghana Police Service and the FIC are the specialized bodies combating corruption through law enforcement.

With regard to cooperation between national authorities, there is no limitation on the sharing of information between CHRAJ and EOCO and they can also establish joint teams. Close coordination of the Police Service, EOCO and FIC was necessary because the police could not seize and freeze assets. The FIC has concluded several MoUs with other national institutions.

With regard to the private sector, the competent authorities, in particular the Attorney-General's Office, are cooperating with internal investigators in private

sector entities on a case-to-case basis. The FIC conducted a series of training and outreach workshops with financial institutions.

Various institutions in Ghana have complaint offices, complaint boxes and hotlines to encourage reporting on corruption.

2.2. Successes and good practices

General part

- Ghana has adopted a multi-agency approach to the fight against corruption. Legislation and practices give opportunities for cooperation between national institutions and allow for information-sharing and flexible distribution of labour.
- Ghana has made in recent years an effort to modernize its legislation on the fight against corruption and has also presented more bills to the Parliament.
- Ghanaian anti-corruption institutions invested considerably in the specialized training of their staff, focusing on the long-term benefits of having suitably trained officials.

Criminalization and law enforcement

- Through its "Justice for All" programme, Ghana has taken action to review and reduce the number of prisoners on remand (art. 30, para. 4).
- Ghana has broad powers for freezing and seizure by the EOCO and FIC which need to be confirmed by the Court after 14 (EOCO) or 7 (FIC) days respectively (art. 31, para. 2).
- It is noted positively that the Attorney-General's Office is cooperating with the internal investigators in private sector entities in the investigation of corruption offences, and that FIC is actively reaching out to the financial sector with training and awareness-raising activities (art. 39, para. 1).
- Ghana has no statute of limitation for criminal offences including corruption (art. 29).

2.3. Challenges in implementation

General part

- In the context of the limited number of prosecutions on corruption offences, note was taken of the fact that EOCO was still in its initial phase and CHRAJ did not have the power to prosecute. Ghana is encouraged to clarify and align its investigation and prosecution powers and responsibilities to ensure efficiency, effectiveness and independence of the prosecution function in corruption cases.
- The adoption of the National Anti-Corruption Action Plan is encouraged.

Criminalization

With regard to criminalization, it is recommended that Ghana:

- Explicitly criminalizes active transnational bribery; considers explicitly criminalizing passive transnational bribery, for the purpose of clarity of the law (art. 16, paras. 1 and 2).
- Ghana could consider whether it would enhance the full implementation of article 17 to create a more specific offence for public officials which relate to assets entrusted to the official by virtue of their position, and regulate the benefit for a third party (art. 17).
- It is recommended that Ghana considers amending its legislation on trading in influence to cover instances in which an undue benefit is provided to "any other person", as well as the conduct of "promise" and the granting "directly or indirectly" of an undue benefit (art. 18, subpara. a).
- Considers amending its legislation to include the elements of "solicitation", "directly or indirectly" and "for himself or herself or for another person" (art. 18, subpara. b).
- Observe that Section 179 C of the Criminal Offences Act is applied to cases in which the benefit is for a third party; should the judiciary not interpret the law in this way it could imply the need for legislative clarification (art. 19).
- Considers criminalizing illicit enrichment (art. 20).
- Considers criminalizing active and passive bribery in the private sector (art. 21, subparas. a and b).
- Considers whether it would enhance the full implementation of article 22 to create a more specific offence (art. 22).
- Amends its legislation to cover the disguise of the origin, true nature, disposition, movement or ownership of or rights with respect to property as stipulated by the Convention (art. 23, subpara. 1 (a) (ii)).[2]
- Provides the Secretary-General of the United Nations with copies of its laws on laundering of proceeds of crime (art. 23, subpara. 2d).
- Although the "continued retention" could be covered under the element "takes possession", considers amending its legislation to cover this element (art. 24).
- Recognizing that the threat of harm offence can in general terms address the elements of physical force, threats and intimidation for purposes of obstruction of justice with regard to the provision of false testimony and to the production of other evidence, assess whether the establishment of a specific offence would be useful (art. 25, subpara. a).
- Amends its legislation to cover the elements of threat and intimidation in a comparable manner to physical violence (art. 25, subpara. b).

[2] The Anti-Money Laundering (Amendment) Act, 2014 (Act 874) criminalized the disguise of the source, disposition, movement or ownership; only the disguise of the true nature of the property is not covered.

Law enforcement

With regard to law enforcement, it is recommended that Ghana:

- Clarifies which sanctions would be applicable to legal persons in criminal cases, with a view to ensuring that they are effective, proportionate and dissuasive; and encourages the systematic application of the criminal responsibility of legal persons (art. 26).
- Take measures to establish an appropriate balance between immunities and the possibility of effectively investigating, prosecuting and adjudicating offences (art. 30, para. 2).
- Considers whether applying parole in appropriate cases could lead to taking more specifically into account the respective gravity of the offence concerned (art. 30, para. 5).
- Considers establishing procedures for the disqualification of persons convicted of corruption offences also for holding office in companies partly owned by the State (art.30, subparas. 7 a and b).
- Amends its legislation to allow that criminal and disciplinary procedures be conducted in parallel (art. 30, para. 8).
- Takes measures to promote the reintegration into society of persons convicted of offences (art. 30, para. 10).
- Amends its legislation to facilitate the confiscation of instruments "destined for use" in the commission of corruption offences (art. 31, subpara. 1 (a)).
- Amends its legislation to facilitate the freezing and seizure of instrumentalities destined for use in the commission of corruption offences for all assets (art. 31, para. 2).
- Adopts measures to regulate the administration by the competent authorities of frozen, seized or confiscated property (art. 31, para. 3).
- Amends its legislation to provide for the seizure and forfeiture of proceeds of crime transformed or converted into other property; for the confiscation up to the assessed value of proceeds intermingled with property acquired from legitimate sources; and for the seizure and confiscation of income or other benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled (art. 31, paras. 4-6).
- Adopts, as a matter of urgency, witness protection legislation and a witness protection programme. These should offer all forms of necessary protection, including evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures their safety, and refer also to experts and victims in so far as they are witnesses, as well as collaborators with justice (art. 32, paras. 1, 2 and 4; art. 37, para. 4).
- Considers entering into agreements and arrangements with other States for the relocation of witnesses or experts (art. 32, para. 3).
- Amends its legislation to enable the views and concerns of victims to be presented and considered in criminal proceedings (art. 32, para. 5).

- Ghana is encouraged to further expand the scope and content of measures to protect whistle-blowers (art. 33).
- It is recommended that Ghana takes measures to clarify the consequences of corruption, such as, whether corruption is a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or similar measures (art. 34).
- Takes such measures to ensure compensation can be obtained for damage suffered as a result of corruption (art. 35).
- Ensures that all specialized law enforcement institutions are provided with the funds established by law (art. 36).
- Considers whether additional measures could be taken to encourage collaborators with justice to cooperate (art. 37, para. 1).
- Ghana could consider entering into agreements or arrangements on cases where a collaborator with justice is located in one State Party but can provide substantial cooperation to the competent authorities of another State Party (art. 37, para. 5).
- Ghana could establish its jurisdiction over corruption offences on the grounds that they are committed by a Ghanaian national and against a Ghanaian national, over acts of participation in and attempts to commit money-laundering carried out outside its territory; and over corruption offences committed against the State (art. 42, para. 2).
- Ghana could establish its jurisdiction over corruption offences when the alleged offender is present in its territory and it does not extradite him or her (art. 42, para. 4).
- It is recommended that in practice, the responsible authorities of Ghana consult with those of other States which also exercise their jurisdiction with a view to coordinating their actions apart from considering the appropriate venue (art. 42, para. 5).

2.4. Technical assistance needs identified to improve implementation of the Convention

Ghana highlighted the following needs for technical assistance:

- Model legislation, training and capacity-building (art. 23).
- Model legislation, capacity-building (art. 26).
- Assistance in legislative drafting, on-site assistance by a relevant expert (art. 30).
- Capacity-building programmes for authorities responsible for identifying, tracing and confiscating property or instrumentalities (art. 31).
- Capacity-building for financial investigations (art. 36).
- Assistance for the establishment of an asset declaration verification system (art. 38).

- Capacity-building programmes for authorities responsible for the establishment and management of reporting programmes and mechanisms (art. 39).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition requirements are set forth in the Extradition Act. Ghana makes extradition conditional on the existence of a treaty and does not use the Convention as legal basis. Ghana applies extradition to treaty States and to Commonwealth States. Ghana has not informed the Secretary-General of the United Nations whether it takes the Convention as legal basis for extradition. An Extradition Bill was pending.

Ghana requires dual criminality for extradition and can extradite its nationals.

According to the first Schedule to the Extradition Act and the Anti-Money Laundering Law, not all corruption offences are extraditable. Ghana does not consider all corruption offences to be included as extraditable offences in its extradition treaties.

Extradition requests are processed through the diplomatic channels. Active extradition requests are prepared by the Attorney-General's office without the need for a judicial order. In passive extradition requests the District Magistrate decides on an evidentiary standard of a prima facie case.

Ghana has a uniform extradition procedure, and does not have procedures in place to simplify and expedite extradition proceedings. With regard to the refusal of discriminatory requests, Sections 2 (2) and 23 of the Extradition Act do not specifically mention discrimination on account of a person's nationality or political opinions. Ghana can as a matter of practice engage in consultations with other States during extradition proceedings.

Ghana is party to several bilateral and multilateral extradition agreements and arrangements.

With regard to the transfer of sentenced persons, Ghana has a Transfer of Convicted Persons Act and has concluded one bilateral arrangement in the matter.

Section 5 (f) of the Mutual Legal Assistance (MLA) Act foresees the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

The MLA Act (Act 807 of 2010) provides the legal framework for mutual legal assistance. Ghana has concluded two regional treaties. Ghana does not require a treaty basis, but can provide assistance on the basis of an arrangement (Section 1 paragraph 1 of the MLA Act). The Convention can be applied in the absence of or in lieu of a treaty.

The Schedule of countries to which Ghana can provide mutual legal assistance lists 163 countries. Ghana did not provide adequate statistics on mutual legal assistance.

Ghana generally requires dual criminality, but Section 17 of the MLA Act contains a procedure to overcome this requirement.

Ghana can provide MLA for a wide range of measures, also with regard to offences for which a legal person is considered responsible. The MLA Act only contains basic rules on the transfer of persons in custody.

The Ministry of Justice is the central authority, although Ghana has not notified the Secretary-General of the United Nations of its designation or the language or languages acceptable for mutual legal assistance requests. The central authority can send and receive MLA requests directly to and from other central authorities. In urgent circumstances, Ghana can receive requests through INTERPOL, by e-mail or orally.

Ghana can as a matter of practice comply with mutual legal assistance requests in accordance with procedures specified in the request, to the extent not contrary to the domestic law of Ghana.

The MLA Act does not contain a clear regulation on the bearing of ordinary costs of the execution of a request.

Ghana requires an application to Court aiming at obtaining permission of providing information to the requesting State.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and50)

The EOCO Act and the Anti-Money-Laundering Act contain mandates for law enforcement cooperation for the EOCO and FIC. The FIC has concluded several memorandums of understanding with foreign counterparts and has applied for membership in the Egmont Group.[3] Furthermore, the authorities cooperate through INTERPOL, the West African Police Chiefs Committee, OLAF and informally with the authorities of other States. Ghana has not concluded any treaties on law enforcement cooperation and does not consider the Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention.

Section 54 of the MLA Act foresees joint investigations, and Ghana has used them in the past in child trafficking cases. Ghana also has a quadripartite agreement on joint investigations with other States in the region.

Ghana can use controlled delivery and undercover operations in national corruption cases and has done so; EOCO can apply for a judicial order for phone tapping. These powers are not clearly regulated in law, however, Section 53 of the MLA Act foresees arrangements for covert investigations at the international level. Ghana has not concluded bilateral or multilateral agreements or arrangements for the use of special investigative techniques at the international level.

[3] Post-country visit development: The FIC is now a member of the Egmont Group, after having been admitted on 24 June 2014.

3.2. Successes and good practices

- Ghana has in 2010 adopted a Mutual Legal Assistance Act that contains very detailed provisions on a wide range of mutual legal assistance matters.
- It contains modern practices that facilitate cooperation, such as spontaneous information disclosure or the use of videoconferencing in mutual legal assistance.
- Further, it explicitly spells out principles that in many countries are applied as a matter of practice, such as the specialty principle or the rules on confidentiality.
- It also contains provisions on related issues such as the transfer of criminal proceedings, joint investigations or the use of special investigative techniques at the international level (art. 46).

3.3. Challenges in implementation

With regard to international cooperation, it is recommended that Ghana:

- Ensures that all corruption offences are extraditable offences, either by including them in the Schedule of the Extradition Act or by turning to an all-crime approach, possibly with a minimum penalty requirement (art. 44, para. 1).
- Ghana could consider granting the extradition of a person in the absence of dual criminality (art. 44, para. 2).
- It is recommended that Ghana ensures that all corruption offences are deemed to be included as an extraditable offence in any of its extradition treaties. Should Ghana conclude more extradition treaties in the future, it should undertake to include such offences as extraditable offences (art. 44, para. 4).
- Considers using the Convention as a legal basis for extradition, or otherwise allow ad hoc arrangements on the basis of the Convention, or, where appropriate, conclude bilateral and multilateral agreements and arrangements with other States; as well as inform the Secretary-General on the use of the Convention as a legal basis (art. 44, paras. 5, 6, 18).
- Endeavours to expedite extradition proceedings by, for example, introducing simplified proceedings (art. 44, para. 9).
- Explicitly regulate that extradition cannot be granted when there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's nationality or political opinions (art. 44 para. 15).
- Take measures to ensure that it can cooperate through MLA on the basis of administrative arrangements with all States parties to the Convention; and consider creating or strengthening a system for the compilation of statistics on mutual legal assistance that also addresses the processing and duration of requests (art. 46, paras. 1 and 24).
- Addresses by legislation or direct application of the Convention the transfer of detained persons for purposes of assistance in obtaining evidence in cases in

which the competent authorities of both States parties agree; and the transfer of persons to Ghana upon a request by Ghana (art. 46, paras. 10-12).

- Notifies the Secretary-General of the designation of its central authority and the language or languages acceptable for mutual legal assistance requests (art. 46, paras. 13 and 14).
- Complies with requests for information on the status of the request by direct application of the Convention (art. 46, para. 24).
- Clarify that ordinary costs of the execution of a request should always be borne by the requested State (art. 46, para. 28).
- Considers applying the Convention directly and, where appropriate, conclude bilateral agreements or arrangements (art. 46, para. 30).
- Expands the existing structures for international cooperation in law enforcement and explore further avenues, including the exchange of personnel (art. 48, para. 1).
- Considers using the Convention as the basis for mutual law enforcement cooperation, or otherwise, consider concluding bilateral or other multilateral agreements or arrangements on the matter (art. 48, para. 2).
- Continue cooperating with other States to respond to corruption committed through the use of modern technology (art. 48, para. 3).
- Clarify its legislation with regard to controlled delivery and undercover operations, and consider establishing other special investigative techniques, such as electronic surveillance; and consider strengthening EOCO's capacities to perform phone surveillance (art. 50, paras. 1 and 4).
- Considers entering into agreements or arrangements, or allow decisions to use special investigative techniques at the international level to be made on a case-by-case basis (art. 50, paras. 2 and 3).

3.4. Technical assistance needs identified to improve implementation of the Convention

Ghana has expressed interest in the following forms of technical assistance:

- Capacity-building programmes for authorities responsible for international cooperation in criminal matters, development of an e-library (art. 46).
- Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques (art. 50).
- Equipment in the area of special investigative techniques (art. 50).